STATE OF MICHIGAN

COURT OF APPEALS

THEODORE L. MORBACH and NICOLE MORBACH, Plaintiffs-Appellants, v CONVENIENCE KING GROUP, INC., Defendant-Appellee.	UNPUBLISHED March 15, 2005 No. 251833 Jackson Circuit Court LC No. 02-006953-NO

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Theodore L. Morbach (hereinafter Morbach) drove into a gas station/convenience store owned by defendant and parked his vehicle next to a gas pump. As he alighted from his vehicle, he slipped on ice and fell to the ground, sustaining injuries. Plaintiffs filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that defendant owed no duty to Morbach because the condition of the premises was open and obvious, and no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Riddle v McLouth Steel Products*, 440 Mich 85, 94; 485 NW2d 676 (1992).

The open and obvious danger doctrine pertains to the element of duty that a plaintiff must establish in a prima facie negligence case. *Id.* at 95-96. Whether a danger is open and obvious

depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). But, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

As a general rule, and absent special circumstances, the hazards presented by ice and snow are open and obvious and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002). A property owner must take reasonable measures within a reasonable period after an accumulation of ice and snow to diminish the risk of injury to an invitee only if special aspects make the open and obvious condition unreasonably dangerous. *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99, 106-107; 689 NW2d 737 (2004). The fact that Morbach claimed that he did not see either the large patch of ice or the thin glaze of ice next to it before he fell is irrelevant. *Novotney*, *supra* at 475. He acknowledged that he did not look at the ground as he exited his vehicle, but that he clearly saw the ice after he fell. It is reasonable to conclude that Morbach would have observed the ice had he been paying attention to the area in which he was to step as he exited his vehicle. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). The trial court correctly found that the danger presented by the presence of ice around the pump was open and obvious. *Corey*, *supra* at 6.

Plaintiffs failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. The size of Morbach's vehicle, and his decision to look at advertisements instead of the area into which he was stepping, were not special aspects of the condition itself. Moreover, the danger the ice around the pump presented was avoidable. Morbach could have used a different pump and parked in another location in the lot. Furthermore, the condition was not so unreasonably dangerous that it created a risk of death or severe injury.[1] Cf. *Lugo*, *supra* at 518; *Corey*, *supra* at 6-7 (falling several feet down ice-covered steps does not meet *Lugo* standard for unreasonable danger). The trial court properly granted summary disposition to defendant.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell

[1] This conclusion is reasonable notwithstanding the fact that Morbach suffered a more severe injury than one might anticipate under the circumstances.